

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Tomotaka HASHIMOTO et al.

Group Art Unit: 1797

Patent No.: 7,578,940

Examiner: Sun U. Kim

Issued: August 25, 2009

For: MEMBRANE CARTRIDGE,  
MEMBRANE SEPARATING  
DEVICE, AND MEMBRANE  
SEPARATING METHOD

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**APPLICATION FOR PATENT TERM ADJUSTMENT—POST GRANT**

In accordance with 37 C.F.R. § 1.705(b), Applicant hereby applies for patent term adjustment under 35 U.S.C. § 154(b) of 110 days. This application is being filed within two months of issuance of the above patent, as required by 37 C.F.R. § 1.705(d).

**I. Statement of the Facts Involved**

**A. Correct Patent Term Adjustment and Relevant Dates**

The U.S. Patent and Trademark office (USPTO) issued the subject U.S. Patent No. 7, 578,940 (the '940 patent) on August 25, 2009, with a patent term adjustment of 325 days. This application was filed on December 16, 2005, as a U.S. National Stage

Application. The USPTO reached the PTA of 325 days in view of a 416 PTO delay to issue the first notification (April 8, 2008) and 91 days of applicant delay.

A Request for Continued Examination (RCE) was filed on April 6, 2009. Thus, 110 days of USPTO delay accrued after the application had been pending for three years (between the commencement date of December 17, 2005, and the third anniversary of date of December 17, 2008, and the filing of the RCE on April 6, 2009). Under the PTO's manner of calculating PTA, applicant was not provided those additional 110 days of PTO delay in the PTA.

In view of the decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas* on September 30, 2008, patentee submits it is entitled to a total patent term adjustment of 425 days which is the sum of 110 days of patent term adjustment due to exceeding three year pendency accrued at the time the RCE was filed and 325 days resulting from the 416 day PTO delay to issue the first notification under 35 U.S.C. § 132, and the 91 days of applicant delay. The 110 days exceeding the three year pendency did not actually overlap with any of the earlier 416 day PTO delay.

#### **B. Terminal Disclaimer**

The above-identified application is not subject to a Terminal Disclaimer.

#### **C. Reasonable Efforts**

There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing of examination of the above-identified application, as set forth in 37 C.F.R. § 1.704, other than those discussed above.

#### **II. Fee**

As required by 37 C.F.R. § 1.705(b)(1), this application is accompanied by a check for \$200.00 to cover the required fee. Please charge any deficiencies to our

Deposit Account No. 06-0916. If there are any other fees due in connection with the filing of this request, please charge them to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: October 26, 2009

By: Charles E. Van Horn  
Charles E. Van Horn  
Reg. No. 40,266